



1250 Broadway
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August 12, 2020

Via ECF

Hon. Paul G. Gardephe
United States District Court Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

Re: Rothschild v. Serlin 11-Civ-11439 (PGG)

Dear Judge Gardephe:

I represent the Defendant, Jordan Serlin ("Serlin"). I write in opposition to the Plaintiff's Motion to Strike each of Serlin's papers supporting his Motion to Dismiss. Plaintiff's proposed Motion is frivolous. It should be viewed as testing the Court's patience in a case that -- for several independent reasons -- has no business being in federal court.

Plaintiff purports to move pursuant to Federal Rule of Civil Procedure 12. That Rule does not allow for the striking of papers supporting motions. Rule 12(f) provides for the striking of pleadings in rare instances, but Serlin has filed no pleading. No other provision of Rule 12 provides for the striking of any court papers.

Plaintiff's cite to *DeLuca v. AccessIT Grp., Inc.*, 695 F.Supp.2d 54, 61 (S.D.N.Y. 2010) is inapposite, as it does not involve a motion to strike moving papers, but rather concerns the question of whether papers offered in opposition to a motion to dismiss but not incorporated into the complaint should be considered in connection with deciding the motion.

Moreover, Plaintiff's proposed Motion does not raise any issue that Plaintiff did not have an opportunity to raise in his Opposition to the Motion to Dismiss. Plaintiff has already set forth his argument about why the case is not precluded by *res judicata* despite years of litigation in Florida involving Plaintiff and the exact same dispute. Plaintiff's proposal of striking Serlin's Motion Papers would eliminate Serlin's arguments on this point, and also arguments that the case is time-barred since the parties stopped doing business together in March of 2012, as well as Serlin's arguments that Plaintiff fails to state a single claim.



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For the foregoing reasons, Serlin respectfully requests that the Motion to Strike be denied.

Respectfully Submitted,

LAW OFFICE OF DANIEL L. ABRAMS, PLLC

By: *Daniel Abrams*

Daniel L. Abrams